

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA,

ANTHONY DENARD,

Petitioner,

No. CIV-S-02-2639 LKK KJM P

vs.

MIKE KNOWLES,

Respondent.

ORDER TO SHOW CAUSE

Petitioner is a state prisoner proceeding pro se with a second amended petition for writ of habeas corpus under 28 U.S.C. § 2254. The petition incorporates eight separate claims.¹ The court has reviewed the materials submitted by the parties and determined that petitioner has not exhausted state court remedies with respect to the following four aspects of his claims:

1) Petitioner's trial counsel was ineffective for failing to object to statements made by the prosecution during closing argument (Ground 5);

2) Trial counsel was ineffective for failing to object to statements made by the prosecution and the attorney for co-defendant Ms. Jonni Carkhum during trial (Ground 5);

3) The trial court improperly excluded evidence indicating why the police had cause to visit Jonni Carkhum's apartment on November 21, 2000 (Ground 7); and

¹ There are two copies of the second amended petition reflected on the court's docket; the two copies are virtually identical although one, a copy of the original, appears to omit one page. In issuing this order, the court refers to the complete original of the second amended petition filed on November 4, 2003 (docket no. 15).

Good cause appearing, IT IS HEREBY ORDERED that:

2. Within thirty days, petitioner also shall show cause why, if this court is to allow petitioner to proceed in this case, petitioner's unexhausted claims should not be stricken for petitioner's failure to utilize the "stay and abeyance" procedure referenced in the court's October 10, 2003 order.


UNITED STATES MAGISTRATE JUDGE

² In the Answer, respondent identifies aspects only of Ground 5 as unexhausted, but does not expressly waive exhaustion as to other grounds. A waiver of exhaustion may not be implied or inferred. 28 U.S.C. § 2254(b)(3).